representative and also a relative of litigant and friend of the judge, violates 'clearly established due process of law in an impartial tribunal and in violation of the "Indiana statutes governing jurisdiction of it's courts" *Stump v. Sparkman* 435 U.S. 349, 363, 98 S.Ct. 1099, 1108 (U.S.Ind.,1978) Pre-determined outcomes and agreement to abandon impartiality are non-judicial acts that should not be shielded by absolute judicial immunity. Every party expects a judge to be impartial every reasonable man on the street knows this is a "clearly established" law. An agreement to abandon impartiality "depriving judge and prosecutor of immunity" *Ashelman v. Pope* 769 F.2d 1360 (C.A.9 (Ariz.),1985) as in *Ashelman* should be applied in case like this one for the sake of the constitutional guarantee of impartiality of the judicial system in this country. The judges private prior arrangements to decide in favor of one party is not a judicial act, because judicial impartiality is the "expectations of the parties "435 U.S. 349, 363, according to the holding in *Stump* it deprives the judge of subject matter jurisdiction *Stump v. Sparkman* 435 U.S. 349, 363, 98 S.Ct. 1099, 1108 (U.S.Ind.,1978) pursuant to Indiana law A judge "will be subject to liability only when he has acted in clear absence of all jurisdiction" *Stump v. Sparkman* 435 U.S. 349, 98 S.Ct. 1099 (U.S.Ind.,1978). "judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein" *Berger v. U.S.* 255 U.S. 22, 33, 41 S.Ct. 230, 233 (U.S.1921)" Tribunals of the country shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial" *Berger v. U.S.* 255 U.S. 22, 36,

41 S.Ct. 230, 234 (U.S.1921) In the *Berger* court the court held that the judge " had no lawful right or power to preside as judge on the trial" *Berger v. U.S.* 255 U.S. 22, 36, 41 S.Ct. 230, 234 (U.S.1921) due to his personal bias as in this case before the court if a state judge "had no lawful right or power to preside as judge on the trial "*Berger v. U.S.* 255 U.S. 22, 36, 41 S.Ct. 230, 234 (U.S.1921) Such a judge acted in absence of all jurisdiction and should not be granted absolute judicial immunity. Investigatory function, was administrative function rather than judicial function, for which judges if anything should be "entitled to only qualified immunity" *Buckley v. Fitzsimmons* 509 U.S. 259, 113 S.Ct. 2606 (U.S.Ill.,1993). "Judges are not absolutely immune from liability and damages for administrative" functions *Forrester v. White* 484 U.S. 219, 108 S.Ct. 538 (U.S.Ill.,1988) such as independently investigating facts like Thacker did.

Due process in impartial tribunals is a "clearly established" constitutional right *Harlow v. Fitzgerald* 457 U.S. 800, 102 S.Ct. 2727 (U.S.Dist .Col.,1982), "right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that the particular action is a violation) violates a clearly established right" *Anderson v. Creighton* 483 U.S. 635, 639, 107 S.Ct. 3034, 3039 (U.S.,1987). In *Harlow* the court held that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would not have known" *Harlow v. Fitzgerald* 457 U.S. 800, 102 S.Ct. 2727, 2729 (U.S.Dist.Col.,1982). Judges who violates "clearly established" due process by impartial tribunal should not

be shielded from liability. The "Constitutional floor established by Due Process Clause of Fourteenth Amendment requires fair trial in fair tribunal before judge with no actual bias against defendant or interest in outcome of his particular case." *Bracy v. Gramley* 520 U.S. 899, 117 S.Ct. 1793 (U.S.Ill.,1997) "Subjecting liberty and property of defendant to court, judge of which has direct, substantial, pecuniary interest against him, is denial of due process." *Tumey v. State of Ohio* 273 U.S. 510, 47 S.Ct. 437 (U.S., 1927). Loubser repeatedly requested removal from this bias and prejudice jurisdiction against her and the judges conspired to keep her case before them due to their pecuniary interest to provide the outcome they agreed to prior to the trial which is not a judicial act and should not be shielded from liability. Judge Thacker based the division of assets from what he learned on the golf course and altered the tax year (Pet App.27, 29, 39) of Loubser's corporation and then had attorney Justice threaten (Pet App. 28) her if she requested a correction of errors. Again the same illegal custom repeated when judge Kepner altered the tax year (Pet App.28, 40) and had attorney Justice threaten Loubser(Pet App.28, 40) if she dared to ask correction of errors. "If court acts without authority, its judgments and orders are regarded as nullities and for no bar to a recovery, even prior to a reversal. " *Hickey's Lessee v. Stewart* 44 U.S. 750, 1845 WL 6019, 1 (U.S.Miss.) (U.S.1845)

> "Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law." *Tumey v. State of Ohio* 273 U.S. 510, 532, 47 S.Ct. 437,444 (U.S., 1927).

This standard should also apply to civil cases in which

litigants face loosing their property and their livelihood, by court order of a partial judge. The state judge may hold legal proceedings with " less formality" (Pet. App. 3), but the judgments are they render in less formal proceedings very formally deprives a litigant of their property. A judge has to be impartial such and extrajudicial agreement to abandon impartiality should not be protected by absolute judicial immunity, because it will set president that litigants in small rural towns, especially litigants of foreign national origin in small rural towns are not entitled to a fair and impartial trial, because they were not born with the as part of the social club. A trial for such a litigant would be no different than a hearing before and average man on the street, without due process. Judges should not be immune for their private prior agreements to decide in favor of one party, it is not a judicial act, they could have judicial immunity for their subsequent judicial acts but immunity should be declined for their extra-judicial non-judicial agreements to violate the constitutional protection of due process and equal protection guaranteed to all litigants of the United States. The power of a judge defined in the Indiana Code *IC 33-28-1-5(2)* "Make all proper judgments, sentences, decrees, orders, and injunctions, issue all processes, and do other acts as may be proper to carry into effect the same, in conformity with Indiana laws and Constitution of the State of Indiana. *IC 33-28-1-5 (2)* The Indiana Code of Judicial Conduct states ." An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards in order to preserve the integrity and independence of the judiciary. "*Code of Jud.Conduct, Canon 1 (A)*" A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." *Code of*

Jud.Conduct, Canon 2 (A). " A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently *Code of Jud Conduct*, Cannon 3. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. *Code of Jud.Conduct, Canon 3 (A)* Adjudicative Responsibilities. (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required. *Code of Jud.Conduct, Canon 3 (B)(1)(5)* A judge shall perform judicial duties without bias or prejudice. *Code of Jud.Conduct, Canon 3 (B)(5)* "A judge shall not initiate, permit, or consider ex parte communications, *Code of Jud.Conduct, Canon 3(B)(8)* Disqualification. "(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: *Code of Jud.Conduct, Canon 3(E)(1)(a)* the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding; *(b)* the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter; or the judge has been a material witness concerning it; *Code of Jud.Conduct, Canon 3(E)(1)(a)(b)(c)* the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any person residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest which is more than de minimis that could be substantially affected by the proceeding; or *(d)* the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person, or a person residing in the judge's household: *i)* is a party to the proceeding, or an officer, director or trustee of a party; *(ii)* is acting as a lawyer in the proceeding" *Code of Jud.Conduct, Canon*

3E(1)(c)(d)(i)(ii). The Indiana Code of judicial conduct mimics exactly *28 USCA § 455* disqualification standards for "Any justice, judge" of the United States. *28 USCA. § 455*, for federal judges.

> "To treat the relationship between a citizen and a federal agent unconstitutionally exercising his authority as no different from the relationship, between two private citizens. In so doing, they ignore the fact that power, once granted, does not disappear like a magic gift when it is wrongfully used. An agent acting-albeit unconstitutionally-in the name of the United States possesses a far greater capacity for harm than an individual trespasser exercising no authority other than his own. " *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* 403 U.S. 388, 391-392, 91 S.Ct. 1999,2002 (U.S.N.Y. 1971)

This same standard should be applied to state officers who are acting under color of law. No private individual can deprive a person of his livelihood, therefore state judges who deliberately engage in a non-judicial act of extra-judicial agreement to act unconstitutionally and hold informal partial judicial proceedings in the name of the State of Indiana processes a far greater capacity to harm than a private citizen exercising no authority other than his own. "Judicial immunity is overcome in only two sets of circumstances: judge is not immune from liability for non-judicial actions, i.e., actions not taken in judge's judicial capacity; and judge is not immune for actions, though judicial in nature, taken in complete absence of all jurisdiction. "*Mireles v. Waco* 502 U.S. 9, 112 S.Ct.

286 (U.S.Cal.,1991) Loubser's case differs from this where the "Judge's alleged actions in directing police officers to bring before judge attorney who was in courthouse were taken in judge's "judicial capacity" and, thus, judge was judicially immune from § 1983 suit," *Mireles v. Waco* 502 U.S. 9, 112 S.Ct.286 (U.S.Cal.,1991). Loubser's case differs where the judges agreed outside of the court room to violate her right to due process to deprive her of her livelihood. This is not a " judicial act" the "judicial act" defense for absolute judicial immunity is not applicable in this case before the Court today. The colors of a state should not be a blanket immunity for deliberate and intentional unconstitutional conduct. It will set president that small rural state judges do not have to uphold the constitution of the United States of America and citizens of foreign national origin are not entitled to the equal protection of the constitution and their property and livelihood can be deprived without due process unlike American born citizens in larger cities as asserted by the United States Court of Appeals Seventh Circuit. This case is of great public importance to guarantee all citizens of foreign national origin in small rural towns the equal protection of the laws. The immunities should not protect violations of "clearly established" rights such as due process , otherwise the immunity overrides congresses intent with 42 U.S.C.A. § 1983 to protect citizens in states from unconstitutional conduct of state officers and denies citizens of states the protection of the constitution. "The statute, which came on the books as s 1 of the Ku Klux Klan Act of April 20, 1871, 17 Stat. 13, provides that 'every person' who under color of state law or custom 'subjects, or causes to be subjected, any citizen * * * to the deprivation of any rights, privileges, or immunities

secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.' To most, 'every person' would mean every person, not every person except judges. " As Justice DOUGLAS said in his dissenting opinion in *Pierson v. Ray* 386 U.S. 547, 558-564, 87 S.Ct. 1213,1220 - 1222 (U.S.Miss. 1967). Loubser's case clearly shows the condition of lawlessness which exists in this Indiana State court, under which a citizen was denied her civil rights. Congress intended to provide a remedy for the wrongs being perpetrated. A condition of lawlessness, a judge hugging a witness, a judge being physically touched by a relative and representative of opposing litigant identified by the attorney bill, a judge joking with a witness about their golf game on the witness stand, a judge allowing a litigant to walk around in the court room and joke with his relative and representative , the same women who physically touched the judge before ruling, then the judge laughing with the litigant confirming the informality of the proceeding and their meeting of the minds" goodbye judgee wudgee I will see you around town" (Pet. App. 24, 36, 38,) a kangaroo court a mockery of the due process protection of the constitution granting immunity to such disregard sets president that immunity will protect lawless kangaroo courts. (Pet App. 21-22, 23-26). Loubser admits that Roth rubbing Thakcer's belly is a fact she observed and she have to testify to it in open court and untimely submitted it into her brief prior to testifying about it and the pictures did not show all angles. The fact remains Candice Roth a relative and representative of litigant Pala physically touched the judge after having been in contact with Hoover the attorney for litigant Pala. (Pet. App. 21-26, 34-35). Denying immunity to these

judges will set president that all judicial proceeding have to be formal and the constitution protects all people even in small rural towns and it will be a deterrent to judges to remove themselves of the jurisdiction in which they are partial and allow litigants the equal protection. This complete breakdown in the administration of justice in this Indiana court has allowed laws that are nondiscriminatory on their face to be applied in a discriminatory manner and were ignored and the Constitution was defied this is the background for which 42 USCA § 1983 was passed and this is the background against which it should be interpreted. This statute was a remedial statute which purpose was to remedy the defects in well established preexisting law such as the doctrine of judicial immunity. Loubser has not brought these judges into federal court for honestly and conscientiously deciding the law as they understood it to be , quite the contrary she brought their intentionally agreement to abandon their oath of office to uphold the constitution of the United States of America a non- judicial act and their predetermined agreement of the outcome of the trial to the federal court. The Revised Statutes of 1878 as printed in 42 USCA § 1983, refers to " every person" rather than "any person" this did not " exclude judges. No one should be so protected by immunities that they are above the laws of the United States of America. Then some state courts like these Indiana state courts are instruments of suppression of civil rights. The wrong that need to be remedied still exists. A judge who is guilty of using his powers to vent spleen and personal motives on a litigant does not grant such a litigant the due process protection of the fourteenth amendment. A"judge should not himself

give vent to personal spleen or respond to a personal grievance. These are subtle matters, for they concern the ingredients of what constitutes justice. Therefore, justice must satisfy the appearance of justice. *Offutt v. U.S.* 348 U.S. 11, 14, 75 S.Ct. 11, 13 (U.S. 1954); *Peckham v. United States*, 93 U.S.App.D.C. 136, 210 F.2d 693, 702. Acts "all without regard for the Fourteenth Amendment or state constitution; " *Harper v. Merckle* 638 F.2d 848 (C.A.Fla., 1981) should not grant absolute immunity for the acts, but only qualified immunity. Act such as independently investigating facts (Pet App .37, 39) discussing division of assets on the golf course, then alter Tax year as result and divide assets based on that fact. The method on how assets division should be done was brought to the state judge Thacker's attention at a social gathering. The division of assets based on the standard of living the state judge determined by observing Loubser socializing with friends (Pet. App. 37) outside of the court room, " both parties continued to socialize with their friends" State judge Thacker admitted by this statement that he was socializing with litigant Pala or as Pala said " goodbye judgee wudgee, I will see you around town". No testimony to this fact was every testified to at trial. The judge based decision in the court room on what he learned at social gatherings and not based on what the judge learned in the court room. This act outside of court room of indenpendantly investigating facts by judges are not protected by absolute immunity as in the *Harper* court. *Harper v. Merckle* 638 F.2d 848 (C.A.Fla., 1981) This judge acted as a "finder of fact and judge, all without benefit of counsel, and all of which actions were taken without regard of Fourteenth Amendment " *Harper v. Merckle* 638 F.2d 848 (C.A.Fla., 1981). This is an

"illegal" act "for purpose of claim under Civil Rights Act" based on independent investigation of facts for deliberate, malicious deprivation of property "such illegality had no effect on whether judge was judicially immune from liability for damages." 42 U.S.C.A. § 1983 *Harper v. Merckle* 638 F.2d 848 (C.A.Fla., 1981) "A judges nonjudicial acts" would be immune from damages liability under Civil Rights Act unless he knew or reasonably should have known that the action he took would violate plaintiff's constitutional rights or if he took the action with malicious intention to cause a deprivation of such rights" *Harper v. Merckle* 638 F.2d 848 (C.A.Fla., 1981). Hugging a witness are non-judicial acts and if anything only qualified immunity should be granted. Absolute judicial immunity should not be granted to protect state judges who are unfaithful to their oath of office. Denying immunity to these judges will set president to deter judges in the future to not deliberately and intentionally agree to be unfaithful to their oath of office and decide in favor of a party and turn a court room into a kangaroo court. It will also set president that if a litigant request removal form such a jurisdiction so biased against them that a judge will not deliberately keep that case before him to guarantee a favorable outcome to his friends. "Congress has power to enforce Fourteenth Amendment against those who carry badge of authority of a state and represent it in some capacity, whether they act in accordance with their authority or misuse it. " *Monroe v. Pape* 365 U.S. 167, 81 S.Ct. 473 (U.S. 1961) . If judges are always immune it is to say that 'The King can do no wrong'

> "'The reason and cause why a judge, for anything done by him as judge, by the authority which the

> king hath committed to him, and as sitting in the seat of the king (concerning his justice), shall not be drawn in question before ary other judge, for any surmise of corruption, except before the king himself, is for this: the king himself is *de jure* to deliver justice to all his subjects; and for this, that he himself cannot do it to all persons, he delegates his power to his judges, who have the custody and guard of the king's oath. And forasmuch as this concerns the honor and conscience of the king, there is great reason that the king himself shall take account of it, *and no other*.'
>
> *Randall v. Brigham* 74 U.S. 523, 533 (U.S.1868)

Since there is no king in the United States, this immunity doctrine could be interpreted as a doctrine of protection for lawlessness , because there is no 'king' that will deliver justice to all his subjects if judges are immune. Since congress makes the law of the United States the congress could be considered the 'king' Congress expressly said that 'every person' who deprives a citizen of their civil rights shall be held liable in suit of equity. To apply the law the 'king' of the United States, congress guaranteed justice to all his subjects in the remedy in 42 U.S.C.A. § 1983. Judges were not excluded and therefore should not be granted blanket immunity for deliberately and intentionally being unfaithful to their oath of office and the constitution of the United States of America. Public policy demands impartiality and not absolute immunity for violation of this "clearly established " right, *Harlow v. Fitzgerald* 457 U.S. 800, 102 S.Ct. 2727 (U.S.Dist.Col.,1982). "Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or

constitutional rights ' *Harlow v. Fitzgerald* 457 U.S. 800, 102 S.Ct. 727 (U.S.Dist. Col.,1982) Therefore these state judges should not be immune from liability and be entitled to immunity as "officials are entitled to a qualified good faith immunity from liability for damages under the Civil Rights Act, they are not immune from such liability if they knew or reasonably should have known that the action they took within their sphere of official responsibility would violate the constitutional rights" *Wood v. Strickland* 420 U.S. 308, 95 S.Ct. 992 (U.S.Ark. 1975). This standard should apply to these state judges who should have known to abandon their impartiality, an action they took within their sphere of official responsibilities is an unconstitutional act and would violated the constitutional rights of the litigant affected and for such act they should not be immune from damage liabilities under the Civil Rights Act. Abandoning impartiality is not just unconstitutional , but is in violation of the Indiana Code of Judicial Conduct and requires disqualification and deprives them of subject matter jurisdiction in a case where disqualification was required per Indiana Law. ". A judge shall hear and decide matters assigned to the judge except those in which disqualification is required. *Code of Jud.Conduct, Canon* 3 (B)(1). As in the case of Loubser "they took the action with malicious intent to cause a deprivation of such rights or other injury "*Wood v. Strickland* 420 U.S. 308, 95 S.Ct. 992 (U.S.Ark. 1975) because they racially profiled Loubser as a "fucking South African bitch who makes too much fucking money". This was the malicious intent to deprive her of her livelihood. Therefore under this Court's holding in *Wood v. Strickland* these judges malicious intent to deliberately deprive Loubser of

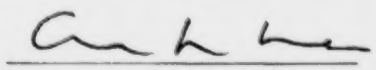
property and livelihood without due process of law and equal protection of law should not grant them the defense of absolute judicial immunity. If small rural town judges who are angered that citizen's of foreign national origin make more money than they, are given free reign under the color of law to deprive a litigant of their livelihood without the due process of law, then they have been given a licence to re-introduce a new form of slavery by depriving a litigant of their livelihood prohibited by 42 U.S.C.A. § 1994 "either slavery nor *involuntary servitude* except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, nor any place subject to their jurisdiction. *Slaughter-House Cases* 83 U.S. 36, 38, 1872 WL 15386, 6 (U.S.La.) (U.S.null). The malicious intent was to place Loubser under involuntary servitude by depriving her of her livelihood in violation of the thirteenth amendment and then threaten her with a abuse of law if she dared not to work and live where she want to (Pet App 30-31). When defendants went so far as too threaten her with abuse of law if she dared to move to Indianapolis and she had to cancel her rented apartment in Indianapolis or face having no funds to live off by court order. Government officials are immune from "civil damages insofar as their conduct does not violate "clearly established" statutory or constitutional rights of which a reasonable person " should have known. *Harlow v. Fitzgerald* 457 U.S. 800, 801, 102 S.Ct. 2727, 2729 (U.S.Dist. Col.,1982). Every reasonable person knows that a judge has to be impartial and for an extra-judicial non judicial act such as an agreement to abandon impartiality for a predetermined outcome, these judges for the sake of public interest should not be granted absolute judicial immunity for acting in absence of jurisdiction, when the disqualification

statute required that they were not authorized to preside over this case for violating the "expectations" of due process and equal protection by impartiality. USCA 1985(3) Denying immunity to these state judges will be a deterrent for state judges not deny litigants of foreign national origin due process and equal protection.

CONCLUSION

For the forgoing reasons this Court should grant Writ of Certiorari to the Supreme court to reverse the dismissal of civil claim against the judges by the court of Appeals and deny the judges absolute judicial immunity and remand the judges to trial.

Respectfully submitted,



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STATUATORY APPENDIX

U.S.C.A. Const. Amend. XIV § 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. "

42 U.S.C.A. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress"

42 U.S.C.A. § 1985 (3)

(3) Depriving persons of rights or privileges.

"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat,"....." or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

42 U.S.C.A. § 1994

"The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

U.S.C.A. Const. Amend. XIII§(1)

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

28 U.S.C. § 1331(a):

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

28 U.S.C.A. § 1254 (1)

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C.A. § 1343 (a)(1)(2)(3)(4)

(a) The district courts shall have original jurisdiction of

any civil action authorized by law to be commenced by any person:**(1)** To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42; **(2)** To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent; **(3)** To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; **(4)** To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 10 day of May, 2006 a true and complete copy of the foregoing was served upon each of the following individuals by depositing a copy of same to each in the United States mail with sufficient first class postage affixed thereto.

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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

ANNARE L. LOUBSER,
Petitioner

v.

ROBERT W. THACKER
REX W. KEPNER
Respondents

On Petition For Writ Of Certiorari
To The United States Seventh Circuit Court of Appeals

APPENDIX TO PETITION FOR WRIT OF CERTIORARI PAGE 1-40

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May ,2006

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In the
United States Court of Appeals
For the Seventh Circuit

No. 05-3058

ANNARE L. LOUBSER,

Plaintiff-Appellant,

v.

ROBERT W. THACKER, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Indiana, Hammond Division.
No. 4:04-CV-75 AS—**Allen Sharp**, *Judge*.

SUBMITTED DECEMBER 5, 2005—DECIDED MARCH 8, 2006

Before POSNER, WILLIAMS, and SYKES, *Circuit Judges*.

POSNER, *Circuit Judge*. Annare Loubser brought this federal civil rights suit under 42 U.S.C. § 1983 against more than 40 individuals who she alleges conspired to defraud her by corrupting her divorce proceedings; those proceedings ended in a judgment that, she claims, deprived her of property to which she was entitled. She brought this suit after the state appellate court had affirmed the judgment in the divorce proceedings. The district court dismissed the suit on the pleadings as barred by two judge-made doctrines: *Rooker-Feldman*, which denies the lower federal courts the authority to overturn a state court judgment, and the

"domestic relations exception," a judge-made doctrine that denies to the federal courts jurisdiction over domestic-relations matters such as divorce on the theory that the reference to "the judicial Power" in Article III of the Constitution was intended to exclude the powers exercised by Britain's ecclesiastical courts, which, rather than the common law courts at Westminster, exercised jurisdiction in such matters. (Because the judgment in the divorce suit was civil rather than criminal, the doctrine of *Heck v. Humphrey* is clearly inapplicable. See, e.g., *Wilkinson v. Dotson*, 125 S. Ct. 1242, 1248 (2005).)

Loubser does not have a lawyer. Although her self-authored complaint is quite well written, it is sprawling—71 pages long divided into 115 paragraphs—disorganized, and repetitious. Worse, it has a paranoid quality, with some of the allegations bordering on, perhaps crossing over into, the fantastic. The complaint charges that over a three-year period beginning in August of 2001, state judges and court reporters, Loubser's own lawyers, her former husband, building contractors, the owner of a jewelry store, and numerous friends and relatives of the other conspirators, conspired to destroy her financially and drive her out of the country by manipulating the divorce proceedings to deny her due process of law, and that they did all this because they consider her a "fucking South African Bitch who makes too much Fucking Money" as a physical therapist. One of the defendants, she charges, destroyed title documents essential to her divorce proceedings; two of the defendants effaced all records of the existence of a related case; her own lawyers, along with court reporters, altered transcripts; her lawyers refused to present crucial evidence; the judge presiding over the divorce proceeding consorted improperly with Loubser's ex-husband and a number of his witnesses, one of whom touched the judge and "rubbed his belly" (at

a party, though, not in court). Among still other allegations, Loubser charges that the judge joked about golf with a witness while he was testifying and the court reporter deliberately deleted the exchange from the transcript, and that Loubser's ex-husband said to the judge, "goodbye judgee wudgee, I will see you around town." In support of the belly-rubbing allegation, Loubser has included in the appendix to her opening brief in this court photographs of the incident, but the photographs do not depict anybody's belly being rubbed.

It is highly improbable that the suit has any merit, but the allegations are not *so* fantastic that the suit can be dismissed out of hand, as being obviously frivolous, as in *Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000). The setting for the alleged conspiracy is White County, Indiana, a rural county with a population of only 25,000. The county seat, Monticello, where the divorce proceedings were held, has a population of only 5,500. No doubt there is much less formality than attends litigation in big cities and much more social interaction among the judges, lawyers, and other members of the community. Loubser has probably mistaken innocent interactions for a vast conspiracy. But this is not a case on the fantasy level of *Lee*, where the complaint "charg[ed] the United States and China with a conspiracy to 'bio-chemically and bio-technologically infect and invade' " various people including Lee "with a mind reading and mental torture device" called "MATRET," to elude which "Lee claim[ed] to have developed a variety of space technologies, ...including an email system and nanny services, that [would] enable the victims of MATRET to relocate to MATRET-free planets." The reference to extraterrestrial nanny service was the clincher.

The grounds on which the district court dismissed Loubser's suit were erroneous. The claim that a defendant

in a civil rights suit "so far succeeded in corrupting the state judicial process as to obtain a favorable judgment" is not barred by the *Rooker-Feldman* doctrine. *Nesses v. Shepard*, 68 F.3d 1003, 1005 (7th Cir. 1995). Otherwise there would be no federal remedy other than an appeal to the U.S. Supreme Court, and that remedy would be ineffectual because the plaintiff could not present evidence showing that the judicial proceeding had been a farce, cf. *Moore v. Dempsey*, 261 U.S. 86, 91 (1923) (Holmes, J.); one cannot present evidence to an appellate court. This is in general rather than in every case, and maybe Indiana law would have enabled Loubser to present evidence in her appeal, but this issue has not been addressed. Moreover, the relief she seeks would go far beyond merely modifying the division of property decreed by the divorce court. She wants damages for the harassment to which the defendants allegedly subjected her en route to the judgment, including efforts to destroy her business as a physical therapist and drive her out of the country.

This is not to say that Loubser had no possible state remedies, including bringing a postjudgment challenge to the decree as having been procured by fraud and complaining about judicial misconduct to the Indiana Judicial Nominating Commission, though the latter course would not have gotten her the monetary damages that she is seeking. But *Rooker-Feldman* does not impose a duty to exhaust judicial and administrative remedies before pursuing a federal civil rights suit. Except in prisoner suits, there is no requirement that a plaintiff in a suit under 42 U.S.C. § 1983 exhaust state remedies. E.g., *Wilkinson v. Dotson, supra*, 125 S. Ct. at 1246; *Patsy v. Board of Regents*, 457 U.S. 496, 501 (1982). And, as we pointed out, merely modifying the divorce decree would not give Loubser all the relief she seeks in this lawsuit.

The domestic-relations exception to federal jurisdiction is not applicable to this case either. A federal court cannot grant or annul a divorce, but that is not what Loubser is seeking.

Of course her claims against the judges are barred; she is complaining about their judicial conduct, and they have absolute immunity from such damages claims. E.g., *John v. Barron*, 897 F.2d 1387, 1391-92 (7th Cir. 1990); *J.B. v. Washington County*, 127 F.3d 919, 925 (10th Cir. 1997). The other official defendants, the court reporters, do not. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 436-37 (1993); *McCullough v. Horton*, 69 F.3d 918 (8th Cir. 1995) (per curiam). *Forte v. Sullivan*, 935 F.2d 1, 3 (1st Cir. 1991) (per curiam), notes a circuit split on this issue, but the split was resolved in the *Antoine* case in favor of liability.

Not that court reporters are liable in a section 1983 case for innocent errors, even if negligent. Section 1983 claims cannot be founded on negligence. *Daniels v. Williams*, 474 U.S. 327, 330 (1986); *Lewis v. Anderson*, 308 F.3d 768, 773 (7th Cir. 2002); *Upsher v. Grosse Point Public School System*, 285 F.3d 448, 453-54 (6th Cir. 2002). But if, as the complaint alleges, the reporters deliberately altered a transcript as part of a conspiracy to defraud a litigant, they can, lacking absolute immunity, be held liable. The defendants do not argue otherwise.

The remaining issue is whether the allegations of conspiracy are sufficiently informative to survive dismissal. The issue is close. Although conspiracy is not something that Rule 9(b) of the Federal Rules of Civil Procedure requires be proved with particularity, and so a plain and short statement will do, *Hoskins v. Poelstra*, 320 F.3d 761 (7th Cir. 2003); *Walker v. Benjamin*, 293 F.3d 1030, 1039 (7th Cir. 2002); *Walker v. Thompson*, 288 F.3d 1005, 1007 (7th Cir. 2002); see

generally *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 512 (2002); *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993), it differs from other claims in having a degree of vagueness that makes a bare claim of "conspiracy" wholly uninformative to the defendant. Federal pleading entitles a defendant to notice of the plaintiff's claim so that he can prepare responsive pleadings. Fed. R. Civ. P. 8(a); *Doe v. Smith*, 429 F.3d 706, 708 (7th Cir. 2005); *Lotierzo v. A Woman's World Medical Center, Inc.*, 278 F.3d 1180, 1183 (11th Cir. 2002). That is why courts require the plaintiff to allege the parties, the general purpose, and the approximate date of the conspiracy. *Walker v. Thompson*, *supra*, 288 F.3d at 1007-08; *Ryan v. Mary Immaculate Queen Center*, 188 F.3d 857, 858-60 (7th Cir. 1999).

But this information can be found in the plaintiff's complaint, though in disjointed form. The parties to the conspiracy are clearly identified; the conspiracy is alleged to have begun in August of 2001 and to have continued for at least three years; and its purpose—to deprive the plaintiff of her property and livelihood by corrupting her divorce proceeding—is clearly if repetitiously stated as well. *Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir. 1999). The dates on which particular defendants joined the conspiracy are not alleged, but that is not the kind of information that a plaintiff can be expected to have when she files her complaint.

What is true is that the complaint is confusing. The district court would have been within its rights in dismissing it on that ground, e.g., *Fidelity National Title Ins. Co. v. Intercounty National Title Ins. Co.*, 412 F.3d 745, 749 (7th Cir. 2005); *Lindell v. McCallum*, 352 F.3d 1107, 1110 (7th Cir. 2003); *Davis v. Ruby Foods, Inc.*, 269 F.3d 818, 820 (7th Cir. 2001); *In re Westinghouse Securities Litigation*, 90 F.3d 696, 703-04 (3d Cir.

1996); *Simmons v. Abruzzo*, 49 F.3d 83, 86-87 (2d Cir. 1995), but with leave to replead. That is not what the court did; it dismissed with prejudice, which would have been proper on grounds of confusion only after the plaintiff had demonstrated her inability to file a lucid complaint, which she has not done. True, this was her second, amended complaint, but the first was not denied on the ground that it was confusing. Nor was confusion among the court's grounds for the dismissal of the second complaint. We should cut her a bit of slack, since she is pro se.

The judgment is affirmed with respect to the dismissal of the judges as defendants, but is otherwise vacated and the case remanded for further proceedings consistent with this opinion.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED WITH DIRECTIONS.

SYKES, *Circuit Judge*, concurring in part, dissenting in part. I agree that Loubser's suit is not barred by the *Rooker-Feldman* doctrine or the "domestic relations exception" to federal jurisdiction. I also agree that the state court judges have absolute immunity and the dismissal of the claims against them should be affirmed on that alternative basis. I cannot agree, however, with the majority's decision to reverse the judgment dismissing the claims against the remaining defendants, and to that extent must respectfully dissent.

Annare Loubser received an unfavorable judgment in what apparently were highly protracted and contentious

divorce proceedings in Indiana state court. She appealed the decision, but the Indiana Court of Appeals affirmed and the Indiana Supreme Court denied review. Loubser then brought this federal suit under 42 U.S.C. § 1983 against *more than 40 defendants*—her former husband; various and sundry people involved in the state divorce court proceedings, including two trial judges, two court reporters, several attorneys and a paralegal, numerous witnesses, and some of their friends and relatives; and the staff counsel to the Indiana Judicial Qualifications Commission.[1] Loubser alleged that the defendants conspired to violate her due process and equal protection rights in her divorce case because of her South African heritage and for other corrupt reasons.

Loubser's 71-page amended complaint is a rambling and often incoherent statement of grievances related to her divorce case, presented in a stream-of-consciousness narrative. It has the paranoid and borderline fantastic quality described in the majority opinion. Among other injuries, Loubser claims the defendants' actions have deprived her of property; kept her in a state of "involuntary servitude"; impeded her "pursuit of happiness"; and interfered with her "liberty to live where she chose [sic] to," her liberty to have children, and her "liberty to work where she wanted to and to chose [sic] how much she wants to work." She made an unusually precise damages demand, seeking $1,169,850.70 in compensatory damages and $3,509,552 in punitive damages.

The district court dismissed the case for lack of jurisdiction under both the *Rooker-Feldman* doctrine and the domes-

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[1] She also sued the United States but voluntarily dismissed that claim.

tic relations exception to federal jurisdiction. The court held that Loubser was essentially attempting to undo the results of her state court divorce case.

Under the *Rooker-Feldman* doctrine the lower federal courts lack jurisdiction to review or modify state court civil judgments. *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 416 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Schmitt v. Schmitt*, 324 F.3d 484, 486 (7th Cir. 2003). As the Supreme Court recently clarified, the doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 125 S. Ct. 1517, 1521-22 (2005).

There is no question that Loubser's amended complaint is an attack on the proceedings in her state court divorce case, alleging due process and equal protection violations; the district court's conclusion that *Rooker-Feldman* blocked federal jurisdiction was thus quite understandable. But this court has held that *Rooker-Feldman* does not prevent litigants from seeking a federal remedy for alleged violations of their constitutional rights where "the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment." *Nesses v. Shepard*, 68 F.3d 1003, 1005 (7th Cir. 1995). To the extent that Loubser is contending she was denied the right to be judged by an uncorrupted tribunal and seeks damages for the resulting harm, *Nesses* holds that *Rooker-Feldman* does not apply. It seems to me that the *Nesses* exception could consume the *Rooker-Feldman* rule if interpreted too broadly, but I do not quarrel with its applicability here.

Nor do I disagree with the majority's conclusion that the domestic relations exception does not apply. The exception prohibits federal courts from hearing custody, divorce, and alimony disputes or any related claims that arise from these domestic relations matters. *Friedlander v. Friedlander*, 149 F.3d 739, 740 (7th Cir. 1998); *Allen v. Allen*, 48 F.3d 259, 262 (1995). I agree that Loubser's claims of conspiracy are not domestic relations matters.

This common ground brings up the alternative arguments to affirm the judgment, and here I part company with the majority in certain significant respects. The amended complaint targets several categories of defendants. The first includes the judges, Robert Thacker and Rex Kepner, who are immune from suit. See *Dawson v. Newman*, 419 F.3d 656, 660 (7th Cir. 2005). I agree with the majority's decision to affirm the dismissal of the case against them.

The next category includes the court reporters who, unlike the judges, do not enjoy absolute immunity from suit. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 436-37 (1993). Loubser alleges that the reporters altered portions of the transcript in her divorce case. But a "plaintiff does not have a constitutional right to a totally accurate transcript of his . . . trial." *Tedford v. Hepting*, 990 F.2d 745, 747 (3d Cir. 1993). A plaintiff's constitutional rights are violated only if the "inaccuracies in the transcript adversely affected the outcome" of the proceeding. *Id.* See also *Colyer v. Ryles*, 827 F.2d 315, 316 (8th Cir. 1987) (explaining that a civil complaint for damages was frivolous where the plaintiff was not prejudiced by an allegedly altered transcript). Loubser does not claim that the alleged alterations in the transcript adversely affected the outcome of her divorce case; there are no further allegations against the court reporters. Loubser has not alleged an actionable constitu-